
ISSUE

May a judge who handles juvenile matters on a rotating basis serve as a mentor to a juvenile who has been diverted out of the court system into an alternative program?

ANSWER

No.

FACTS

The diversion program was established jointly by the court, the local bar and the juvenile intake office. As such, the local judiciary is directly involved in approving the goals and procedures of the program and reviewing the program on a periodic basis.

This court diversion program involves juveniles who are required to participate in the program under a deferred prosecution agreement or a consent decree. The placement of a particular juvenile with a judge mentor would necessarily only be for a juvenile who has neither appeared before the judge mentor in the past nor is likely to appear before the judge in the future. The program is intended to have the mentor become an integral part of the diverted youth's life. A mentor is supposed to strengthen the youth's self-esteem while building trust and providing constructive experiences for the youth. The diversion program requires that mentors file monthly reports logging their activity with the youth as well as two "feedback forms."

DISCUSSION

The Committee concludes that the issues presented are governed by the provisions of SCR 60.03(2) and SCR 60.05(1)(a) and (c).

A. SCR 60.03 states:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Subsection (2) of this Rule provides:

A judge may not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge may not lend the prestige of judicial office to advance the private interests of the judge or of others or convey or permit others to convey the impression

that they are in a special position to influence the judge. A judge may not testify voluntarily as a character witness.

A juvenile in a diversion program who is assigned a judge as a mentor could believe that he or she is being treated in a special manner, or is in a position to influence the mentoring judge or the presiding juvenile judge. Others in the program, and the public, could harbor the same belief.

A judge's role as a mentor for a juvenile would become particularly problematic if the diversion program were to fail. When the juvenile comes to court, a number of potential conflicts arise due to the special relationship between this judge and this juvenile. Colleagues of the judge may be influenced to treat the juvenile differently from other juveniles. The public perception of the bench could be adversely affected if the juvenile commits a serious crime while being mentored by the judge. The juvenile may attempt to use his or her relationship with the judge to influence court proceedings.

B. SCR 60.05 states:

A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

Subsection (1) of this Rule provides:

(1) Extra-judicial activities in general. A judge shall conduct all of the judge's extra-judicial activities so that they do none of the following:

(a) Cast reasonable doubt on the judge's capacity to act impartially as a judge.

. . .

(c) Interfere with the proper performance of judicial duties.

A mentoring judge's activity may interfere with the proper performance of his or her judicial duties. The judge's role as a mentor could influence future proceedings involving the mentored juvenile. The dispositional or sentencing court would have to consider the juvenile's record, which could include the monthly reports and feedback forms filed by the mentoring judge. This situation could affect the ability of the mentoring judge's judicial colleagues to act impartially if they were to consider the impact of the mentoring judge on the juvenile. Finally, a judge acting as a mentor may be perceived as biased in favor of the program or its participants.

CONCLUSION

The Committee concludes that a judge should not become a mentor in a court-sanctioned juvenile diversion program.

APPLICABILITY

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60—Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 02-1 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 21st day of February, 2003.

Thomas H. Barland
Chair